

Israeli Colonialism through Annexation and Denial of the Right to Self-determination

As Israel's occupation of the West Bank, including East Jerusalem, and the Gaza Strip completes its 50th year, attention must turn to the apparent permanency of a scenario required to be temporary. Examination of Israel's control over Palestinian territory, its residents and its natural resources reveals how much broader and more deeply rooted this control has become.

This statement highlights the relevant legal provisions applicable to Israel's continued control of Palestinian territory and residents and considers whether Israeli practices and policies in the occupied Palestinian territory are consistent with the established corpus of international humanitarian law (IHL) which regulates foreign military occupation as temporary administration and the relevant provisions of international human rights law (IHRL). In particular, two Israeli policies which achieve the subjugation, domination and exploitation of the Palestinian people inside the occupied Palestinian territory, and are thus consistent with internationally accepted definitions of colonization are examined: annexation and the denial of the right to self-determination.

Colonization vs. Occupation

A military occupation can be defined as “a transitional period following invasion and preceding the cessation of hostilities”.¹ It is therefore a temporary scenario, and one that “imposes more onerous duties on an Occupying Power than on a party to an international armed conflict.”² The central principles around the corpus of IHL and IHRL are that an occupation is temporary and that an occupying power does not acquire sovereignty over the territory in question.³

Although ‘Colonialism’ finds no treaty-based definition, understanding of the term and colonial practices is derived primarily from UN resolutions. The most prominent is the Declaration on the Granting of Independence to Colonial Countries and Peoples (hereafter ‘the Declaration’), adopted by General Assembly Resolution 1514 (XV) of 14 December 1960. Article 1 of the Declaration affirms that “[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.”

The wording of the Declaration is expansive in scope, prohibiting “colonialism in all its forms and manifestations”. Accordingly, the creeping annexation of occupied territory by way of land confiscation and civilian transfer into that territory would fall within consideration of the

¹ Prosecutor v. Naletilic and Martinovic, Case No. IT-98-34-T, Trial Chamber I, 31 March 2003, Para. 214.

² Ibid.

³ Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention; See Bothe, M, *The Administration of Occupied Territory* in Andrew Clapham/Paola Gaeta/Marco Sassoli (eds.), *The 1949 Geneva Conventions, A Commentary*, OUP 2015, 1455.

Declaration. This position is supported by many resolutions of the United Nations Human Rights Council.⁴

Israeli Colonies: 'Settlements' and 'Settlement Blocs'

Since its commencement in the late 1960s, Israel's transfer of its own citizens into the occupied Palestinian territory (oPt) has been the subject of extensive political attention, and it has become common practice among political powers to refer to Israeli 'settlements' as 'obstacles to peace'. Such an assessment, however, obscures to a large extent the legal reality. Article 49(6) of the Fourth Geneva Convention prohibits an occupying power from transferring its own citizens into the territory it occupies. Contravention of this provision constitutes a grave breach of the Convention,⁵ and is prosecutable as a war crime,⁶ and potentially, a crime against humanity.⁷

Today, the scale of Israel's transfer of its civilian population into the oPt is staggering. The total population of Jewish-Israelis in the West Bank, including East Jerusalem, is close to 800,000.⁸ There are 140 'settlements' and 'settler neighborhoods' which have been authorized and backed by the Israeli government in addition to roughly 100 'settlement outposts'.⁹ In this light, the term 'settlement(s)' does insufficient justice to the legal reality of Israeli construction in the oPt. Instead, Israeli settlement areas are more accurately classified as 'colonies' and the residents of colonies, it follows, constitute 'colonizers'.

De jure and de facto Annexation

The prohibition of acquisition of territory through threat or use of force constitutes a peremptory norm of international law from which no derogation is permitted and which is enshrined in the Charter of the United Nations. Article 2(4) of the Charter demands "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state..."¹⁰ This prohibition includes any attempt by an occupying power to formally or informally annex all or part of the occupied territory.

Furthermore, the most conspicuous action giving rise to colonization is the violation of the territorial integrity of the occupied territory. This subject is expressly addressed in the preamble of the Declaration, noting, "all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory." The Declaration further asserts, "any attempt aimed at the partial or total disruption of the national unity and the territorial

⁴ See for example the UNHRC resolution adopted in March 2016, which stated that "the construction of settlements, settler roads, the wall and other measures" are "tantamount to *de facto* annexation of Palestinian land." UNHRC, 2016, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/31/L.37, 22 March 2016.

⁵ Article 147 of the Fourth Geneva Convention,

⁶ Rome Statute, Article 8(2)(b) vii.

⁷ Rome Statute, Article 7(1)(d).

⁸ B'Tselem, 2017, *Statistics on Settlements and Settler Population*. Available at: <http://www.btselem.org/settlements/statistics>

⁹ Ibid.

¹⁰ UN, Charter of the United Nations, 24 October 1945, Article 2(4). See also: Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625, 24 October 1970; International Court of Justice (ICJ), Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (hereafter 'ICJ Advisory Opinion, 2004'), 9 July 2004, Para 87.

integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.”¹¹

In the oPt, Israel’s colonial construction and expansion, its continuing construction of the Wall, its declarations of ‘state land’ and its legislative and administrative practices all contribute to an incremental annexation of Palestinian territory that also disrupts its territorial integrity.

Annexation of Jerusalem

Following the occupation in 1967, Israel immediately initiated measures to cement its control over Palestinian territory, including the expansion of the municipal boundaries of West Jerusalem by some 70,000 dunums (70 square kilometers). In 1980, Israel passed legislation to formalize East Jerusalem’s annexation under Israeli domestic law.

Furthermore, Palestinian residents of East Jerusalem - numbering 323,700 as of May 2017¹² - are subject to a range of unlawful Israeli policies of dispossession and displacement. Under the discriminatory zoning and planning policy, expansion and development of Palestinian communities is restricted, through various measures including the expropriation of Palestinian land, destruction of homes and property, denial of building permits, and exclusion of Palestinian residents in the planning process.¹³ Such policies are introduced and implemented by Israel with a view to altering the demographic composition of the city. According to official records, Israel seeks to achieve a Palestinian:Jewish-Israeli population ratio in East Jerusalem of 30:70.¹⁴

Route of the Wall

In addition to the construction of colonies, Israel’s Wall, construction of which began in 2002, represents another means through which the Occupying Power has annexed - and seeks to further annex - Palestinian territory. “[T]he construction of the wall and its associated régime created a “fait accompli” on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation.”¹⁵ By extension, this same logic would also seem directly applicable to Israeli colonies and their associated infrastructure. Moreover, the International Court of Justice found that the Wall “severely impedes the exercise by the Palestinian people of its right to self-determination,”¹⁶ and that its construction and associated permit regime “contravene Article 49, paragraph 6, of the Fourth Geneva Convention and the Security Council Resolutions.”¹⁷

¹¹ Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by General Assembly Resolution 1514 (XV), 14 December 1960, Article 6.

¹² The Association for Civil Rights in Israel (ACRI), 21 May 2017, *East Jerusalem 2017: Facts and Figures*, 1. (Hereafter ACRI, *East Jerusalem 2017*) Available at: <http://www.acri.org.il/en/wp-content/uploads/2015/05/EJ-Facts-and-Figures-2015.pdf>

¹³ See BADIL Resource Center for Palestinian Residency and Refugee Rights, December 2014, *Forced Population Transfer: the Case of Palestine, Discriminatory Zoning and Planning*, 37-47. Available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf>

¹⁴ Israel, Jerusalem Municipality, Local Outline Plan No. 4: Jerusalem 2000 Master Plan, Compiled by Eitan Meir et al. Jerusalem, 2004.

¹⁵ ICJ Advisory Opinion, 2004, Para. 121.

¹⁶ ICJ Advisory Opinion, 2004, Para. 122.

¹⁷ ICJ Advisory Opinion, 2004, Para. 134.

Roll-out of Israeli law

Annexation can also be realized through the extra-territorial application of an occupier's laws to all or parts of the occupied territory. In the case of Israel, this serves two key aims: facilitating and 'legalizing' the unlawful acquisition of occupied Palestinian territory and, subsequently, extending the jurisdiction of Israeli civil law to colonies and colonizers. Such legislative roll-out seeks to normalize the expropriation of Palestinian land, and transforms the Occupying Power into a *de facto* sovereign entity. Consequently, Israel's domination of Palestinian territory is one which spans both territorial and legal realms.

In February 2017, the Israeli Knesset ratified the 'Regularization Law' which provides for the retroactive 'legalization' of 'settlement outposts' as well as usurping usage rights pertaining to private Palestinian land in Area C.¹⁸ The law effectively annexes over 800 hectares (8 km² or 8000 dunums) of privately owned Palestinian land which contains 4,000 housing units in 55 Israeli 'outposts' built there.

The roll-out of Israeli law - aiming at the imposition of Israeli sovereignty through further annexation of the oPt - has intensified since the beginning of 2017. Two newly drafted laws are the 'United Jerusalem Law'¹⁹ and 'Greater Jerusalem Bill'.²⁰ The 'United Jerusalem Law' provides that any future concession concerning Jerusalem requires 80 Knesset votes. MK Moalem-Refaeli said "This law has a clear message: The State of Israel will not allow the establishment of a Palestinian state whose capital is eastern Jerusalem."²¹ The "Greater Jerusalem bill" would add the colonies of Gush Etzion, Efrat, Betar Illit, Givat Ze'ev and Ma'aleh Adumim to Jerusalem's municipal boundaries, in effect, annexing those colonies to Israel. Upon approval by the Knesset, these laws would further entrench Israeli sovereignty in the occupied territory through the transition from *de facto* to *de jure* annexation of Palestinian land.

Conclusion and Recommendation:

Israel's policies of annexation of territory underpinned by mass population transfer, the disruption of territorial integrity and denial of self-determination are deliberate and constitute elements of the practice of colonization. As such, third party states and international organizations (including the United Nations Security Council) are under an obligation to take all available measures, including the imposition of sanctions, to ensure Israel's fulfillment of its responsibilities resulting from its breach of peremptory norms of international law.

¹⁸ Official name is the *Law for the Regularization of Settlement in Judea and Samaria* (the Israeli name for the West Bank). For an English version of the full text of the law, see: https://www.adalah.org/uploads/uploads/Settlement_Regularization_Law_English_FINAL_05032017.pdf

¹⁹ Arutz Sheva 7, 26 July 2017, "United Jerusalem Law passes first reading", Israelnationalnews.com, Tal Palon, ed. Available at: <http://www.israelnationalnews.com/News/News.aspx/233037>

²⁰ Lahav Harkov, 26 July 2017, "Netanyahu Backs Bill annexing Jerusalem-area Settlements", The Jerusalem Post. Available at: <http://www.ipost.com/Israel-News/Netanyahu-backs-bill-annexing-Jerusalem-area-settlements-500856>

²¹ Arutz Sheva 7, 26 July 2017, "United Jerusalem Law passes first reading", Israelnationalnews.com, Tal Palon, ed. Available at: <http://www.israelnationalnews.com/News/News.aspx/233037>